

Liquidated Damages constitute a reasonable estimate of such damages, the Debtors are required to pay to Buyer as liquidated damages and not as a penalty (i) the Expense Reimbursement (which shall not exceed \$10 million) plus (ii) \$30 million (clauses (i) and (ii) together, the "Liquidated Damages") immediately in the event that (x) the Purchase Agreement is terminated pursuant to Sections 8.1(b), (c), or (d) of the Purchase Agreement following the Sale Order Approval Date, or (y) Buyer elects to terminate the Purchase Agreement pursuant to Section 8.1(e) of the Purchase Agreement or not to close, in each case because the condition set forth in Section 7.2(a) of the Purchase Agreement has not been satisfied, as a result of a Sellers' Intentional Breach following the Sale Order Approval Date. In the event Buyer terminates the Purchase Agreement pursuant to Section 8.1(e) of the Purchase Agreement or elects not to close, in each case because the condition set forth in Section 7.2(a) of the Purchase Agreement has not been satisfied as a result of some reason other than a Sellers' Intentional Breach, the Debtors shall pay immediately to Buyer the Expense Reimbursement (which shall not exceed \$5 million).

22 In accordance with the terms of the Purchase Agreement, (a) at any time after the date hereof and prior to closing, the Debtors, after consultation with the Creditors Committee, shall and (b) in the event the Debtors fail to comply with the timeline set forth in Exhibit J or at anytime after June 30, 2004 and prior to closing, Buyer shall have the right to deliver a notice (the "Early Closing Election Notice") of its irrevocable election of early closing and promptly close on the Sale Transactions (the "Early Closing Election"); provided, however, that the Closing pursuant thereto shall not occur sooner than twenty (20) Business Days after the delivery of the Early Closing Election Notice. In the event that the Debtors' exclusive periods to file and solicit a plan of reorganization under section 1121 of the Bankruptcy Code are terminated, the Creditors Committee shall be permitted to petition the Court on limited notice to

require the Early Closing Election. The Debtors are authorized and directed to pay the Liquidated Damages to Buyer, as required under and pursuant to the Purchase Agreement, without further order of the Court and the Liquidated Damages shall (a) receive superpriority administrative claim status and shall have priority over any and all administrative expenses of the kinds specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code, and (b) Buyer's right to the Liquidated Damages and the superpriority administrative claim status of such claims shall survive rejection or breach of the Purchase Agreement, and/or conversion or dismissal of these chapter 11 cases and shall be unaffected thereby, provided, however, that the Liquidated Damages shall not prime the Liens held by the Sellers' senior secured lenders and any such amounts payable shall be subordinated to the carve out for professionals fees and fees under 28 U.S.C. § 1930 as provided in the Bankruptcy Court's order authorizing the Debtors to use cash collateral that was entered in these cases.

#### Additional Provisions

23 Pursuant to section 364(c)(1) of the Bankruptcy Code, (a) the obligation of the Debtors to pay any adjustments to the Purchase Price, including interest with respect thereto, and (b) any amounts that may be owed to Buyer pursuant to, or for the Debtors' breach of, any of the Operating Agreements and the Operating Agreement shall receive superpriority administrative claim status and shall have priority over any and all administrative expenses of the kinds specified in sections 503(b), 506(c), 507(a), or 507(b) of the Bankruptcy Code, provided, however, that any such amounts payable shall be subordinate to the carve out for professional fees and fees under 28 U.S.C. § 1930 as provided in the Bankruptcy Court's order authorizing the Debtors to use cash collateral that was entered in these cases.

24 Any amounts payable by the Debtors pursuant to the Purchase Agreement or any of the documents delivered by the Debtors pursuant to or in connection with the Purchase Agreement shall (a) constitute administrative priority expenses of the Debtors' estates pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code, except as otherwise specifically provided in the Purchase Agreement or herein, (b) be paid by the Debtors at the time and in the manner provided in the Purchase Agreement without further order of this Court, and (c) not be discharged, modified or otherwise affected by confirmation of any plan of reorganization of any of the Debtors or conversion or dismissal of these chapter 11 cases

25 Nothing herein approves any schedule, term sheet, master services agreement, or any other document agreement, or instrument whatsoever that relates to that certain Integrated Network Solution Purchase Agreement between Level 3 Communications, LLC ("Level 3"), as successor to Genuity Solutions, Inc., and Allegiance Telecom Company Worldwide, originally dated July 24, 2000 (as amended, the "INSPA"), including, without limitation, the assumption, assumption and assignment, rejection, termination, transfer and/or servicing of the INSPA. The INSPA is an Excluded Asset

26. Nothing herein in any way prejudices, waives, limits, reduces, prejudices, impairs, or impacts in any way the rights and claims of either Level 3 or the Debtors (against Level 3) in connection with the INSPA, related contested matters, and adversary proceedings or otherwise. Nothing in this Order shall constitute res judicata or collateral estoppel in connection with any issue, claim, right or remedy of Level 3 or of the Debtors (against Level 3) in connection with the INSPA, related contested matters and adversary proceedings, or otherwise. Subject to the express provisions provided in this paragraph and paragraph 24 herein, the preliminary objection filed by Level 3 is withdrawn with prejudice. Nothing in paragraphs 24 or

25 of this Order shall impair the Buyer's purchase of the Sale Assets free and clear of all Interests

27 On the date of the Closing, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Sale Assets, if any, as such Interests may have been recorded or may otherwise exist

28 All Liens and other Interests held by the Debtors' senior secured lenders on the Non-Transferred Assets and all other Liens and other Interests shall be released at the Closing to extent such Liens and other Interests relate to the Sale Assets and Buyer shall be granted a first priority, perfected Lien as security for all of the Debtors' obligations to Buyer pursuant to the Operating Agreement(s) on all Non-Transferred Assets pending FCC Consent and State PUC Consent, as applicable

29 Regardless of whether the Debtors' creditors execute the releases set forth in the above paragraphs, this Order (a) shall be effective as a determination that, on the date of the Closing, all Interests of any kind or nature whatsoever existing with respect to the Debtors to the extent such Interests relate to the Sale Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or

otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Sale Assets

30 Except as provided hereafter, each and every federal, state and local governmental agency or department is hereby directed to accept for filing and/or recording and approve as necessary any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement; provided, however, that nothing herein is intended to preempt any rights of the FCC to review and act upon applications filed by the parties for approval of the Sale Transaction pursuant to Section 214 of the Communications Act, or applicable FCC rules.

31 If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Interests with respect to the Debtors or the Sale Assets shall not have delivered to the Debtors prior to the date of the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtors or the Sale Assets or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Sale Assets, and (b) Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Sale Assets of any kind or nature whatsoever.

32. Pursuant to sections 105(a) and 1146(c) of the Bankruptcy Code, the transfer of the Sale Assets to the extent such transfer is authorized by a confirmed chapter 11 plan, shall not be subject to taxation under any federal, state, local, municipal or other law

imposing or purporting to impose a stamp tax or similar tax on any of the Debtors' transfers or conveyances of the Sale Assets, which includes real estate, personal property and any other assets

33 In the event of an Early Closing Election, the Debtors will deposit an amount equal to the amount of the potential stamp taxes or similar taxes into a segregated account and either (a) litigate the applicability of the stamp taxes or similar taxes with the relevant taxing authorities or (b) await the decision of the United States District Court for the Southern District of New York in In re Bethlehem Steel Corporation, Case No. 01-15288 (BRL) regarding the applicability of stamp taxes or similar taxes in the event of an asset sale.

34 As soon as practicable after the Closing, the Debtors shall reserve \$1,500,000 of the proceeds from the Sale Transaction in a segregated account pending a *determination of the claims of the Local Texas Tax Authorities* (as defined in the Local Texas Tax Authorities' Objection to the Motion). The liens of the Local Texas Tax Authorities shall attach to the proceeds in the same validity, amount and priority as and to the extent they exist on the collateral. The amounts in the segregated account shall constitute adequate protection for the sale of the collateral purportedly subject to the Local Texas Tax Authorities' lien, but shall not constitute a limit on the amount that it is ultimately entitled to recover on its claim as ultimately allowed, nor shall it constitute an admission of liability by the Debtors with respect to the Local Texas Tax Authorities' claims, the existence of any liens, or otherwise. Further, nothing herein shall prejudice to the right of any party in interest to assert defenses or object to claims or liens of the Local Texas Tax Authorities. No distribution shall be made from the segregated account absent consent of the Debtors, the Creditors Committee and the Local Texas Tax Authorities, or by order of the Court.

35 All entities who presently are in possession of some or all of the Sale Assets are hereby directed to surrender possession of the Sale Assets to the Debtors at the Closing

36 The Debtors are hereafter not permitted to cause their Representatives to initiate contact with, solicit, or encourage submission of, and are not permitted to consider or accept, any inquiries, proposals or offers by, any Person in connection with any inquiry, proposal, offer, sale or other disposition related to any or all of the Acquired Assets (including, without limitation, a Competing Transaction) and adherence to this paragraph 35 shall not constitute a breach of any fiduciary or other obligations or duties to the estates or any other person or entity whatsoever (regardless of whether in other contexts such person would be entitled to exercise a so-called "fiduciary out")

37. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement (including the breach of the Purchase Agreement as provided in Section 9.12 thereof), all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects.

38 The Sale Transaction is undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transaction(s) contemplated herein shall not affect the validity of the sale of the Sale Assets to Buyer, unless such authorization is duly stayed pending such appeal. Buyer is a purchaser in good faith of the Sale Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

39 The Purchase Agreement and the transactions and instruments contemplated hereby shall be specifically performed and enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, and their respective affiliates, successors, and assigns, or any chapter 7 or chapter 11 trustee of the Debtors and their estates

40 The Purchase Agreement and the transactions and instruments contemplated hereby shall be specifically performable and enforceable against and binding upon, and not subject to rejection or avoidance by the Debtors or any chapter 7 or chapter 11 trustee of the Debtors and their estates

41. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety

42. The Purchase Agreement and any related agreements, documents or other instruments may, with the consent of the Creditors Committee, which shall not be unreasonably withheld, be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court.

43. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and 6006(d), there is no stay pursuant to Bankruptcy Rule 6004(g) and this Order shall be effective and enforceable immediately upon entry.

Dated: New York, New York  
\_\_\_\_\_, 2004

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UNITED STATES BANKRUPTCY JUDGE



BILL OF SALE

**THIS BILL OF SALE** (this "Bill of Sale") is made and delivered this 13 day of August, 2004], Allegiance Telecom, Inc., a Delaware corporation ("ATI"), Allegiance Telecom Company Worldwide, a Delaware corporation ("ATCW" and, together with ATI, "Sellers" and each individually, a "Seller"), and XO Communications, Inc., a Delaware corporation ("Buyer") Capitalized terms defined in the Asset Purchase Agreement (as defined below) which are used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

**WHEREAS**, the Sellers have entered into that certain Asset Purchase Agreement, dated as of August 13, 2004] (as amended from time to time, the "Asset Purchase Agreement"), by and among Sellers and Buyer, which provides, among other things, for the assignment by Sellers to Buyer of the Acquired Assets.

**NOW, THEREFORE**, in consideration of the mutual promises contained in the Asset Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of the Asset Purchase Agreement:

1. Each Seller does hereby sell, convey, assign, transfer and deliver to Buyer free and clear of all Liens and Liabilities (other than Permitted Liens of the type included in clause (iii) of the definition of Permitted Liens in the Asset Purchase Agreement), all of such Seller's right, title and interest in and to the Acquired Assets.
2. This Bill of Sale is executed and delivered pursuant to the Asset Purchase Agreement. Nothing in this Bill of Sale, express or implied, is intended to or shall be construed to supersede, modify, expand or limit in any way the terms of the Asset Purchase Agreement. To the extent that any provision of this Bill of Sale conflicts or is inconsistent with the terms of the Asset Purchase Agreement, the Asset Purchase Agreement shall govern.
3. This Bill of Sale shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
4. The Bill of Sale shall be construed and interpreted, and the rights of the parties shall be determined, in accordance with the Bankruptcy Code and the substantive laws of the State of New York for contracts expected and likely to be performed solely within such state, in each case without regard to the conflict of laws principles thereof or of any other jurisdiction.
5. This Bill of Sale may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, and all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Bill of Sale to be executed and delivered as of the day and year first above written.

**SELLERS:**

ALLEGIANCE TELECOM, INC

By \_\_\_\_\_  
Name:  
Title

ALLEGIANCE TELECOM COMPANY WORLDWIDE

By \_\_\_\_\_  
Name:  
Title:

**BUYER:**

XO COMMUNICATIONS, INC

By. \_\_\_\_\_  
Name:  
Title:

ASSUMPTION AGREEMENT

ASSUMPTION AGREEMENT (this "Agreement") dated as of [REDACTED], 2004], by and among Allegiance Telecom, Inc., a Delaware corporation ("ATI"), Allegiance Telecom Company Worldwide, a Delaware corporation ("ATCW" and, together with ATI, "Sellers" and each individually, a "Seller"), and XO Communications, Inc., a Delaware corporation ("Buyer"). Capitalized terms defined in the Asset Purchase Agreement (as defined below) which are used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

WHEREAS, Sellers and Buyer have entered into that certain Asset Purchase Agreement, dated as of [February 18, 2004] (as amended from time to time, the "Asset Purchase Agreement"), pursuant to which Sellers have agreed to sell, convey, assign, transfer and deliver to Buyer, and Buyer has agreed to purchase, acquire and accept from Sellers, all right, title and interest of Sellers in and to all Acquired Assets and Assumed Liabilities;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. In accordance with and subject to the terms, provisions and limitations of the Asset Purchase Agreement, Buyer hereby assumes the Assumed Liabilities.
2. This Agreement is executed and delivered pursuant to the Asset Purchase Agreement. Nothing in this Agreement, express or implied, is intended to or shall be construed to supersede, modify, expand or limit in any way the terms of the Asset Purchase Agreement. To the extent that any provision of this Agreement conflicts or is inconsistent with the terms of the Asset Purchase Agreement, the Asset Purchase Agreement shall govern.
3. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or give to, any Person other than Buyer and Sellers and their respective successors and permitted assigns, any remedy or claim under or by reason of this instrument or any term, covenant or condition hereof, and all the terms, covenants and conditions, promises and agreements contained in this instrument shall be for the sole and exclusive benefit of Buyer and Sellers and their respective successors and permitted assigns.
4. This Agreement may be amended, supplemented or modified, and any provision hereof may be waived, only pursuant to a written instrument making specific reference to this Agreement signed by each of the parties hereto.
5. This Agreement shall be construed and interpreted, and the rights of the parties shall be determined, in accordance with the Bankruptcy Code and the substantive laws of the State of New York for contracts expected and likely to be

performed solely within such state, in each case without regard to the conflict of laws principles thereof or of any other jurisdiction

6. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, and all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this  
Assumption Agreement as of the date and year first above written

**SELLERS:**

ALLEGIANCE TELECOM, INC

By \_\_\_\_\_  
Name  
Title

ALLEGIANCE TELECOM COMPANY WORLDWIDE

By: \_\_\_\_\_  
Name:  
Title:

**BUYER:**

XO COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Name:  
Title:

## PURCHASE PRICE ESCROW AGREEMENT

PURCHASE PRICE ESCROW AGREEMENT (this "*Escrow Agreement*"), dated as of [REDACTED] 2004], by and among Allegiance Telecom, Inc., a Delaware corporation, and Allegiance Telecom Company Worldwide, a Delaware corporation, debtors-in-possession under title 11, of the United States Code, 11 U.S.C. in the United States Bankruptcy Court for the Southern District of New York (each individually, "*Seller*," and together, "*Sellers*"), XO Communications, Inc., a Delaware corporation ("*Buyer*"), and [REDACTED] as escrow agent (the "*Escrow Agent*")

## WITNESSETH

WHEREAS, Buyer and Sellers have entered into an Asset Purchase Agreement, dated as of [February 18, 2004] (the "*Asset Purchase Agreement*" and capitalized terms used herein and not otherwise defined in this Escrow Agreement shall have the meaning ascribed to them in the Asset Purchase Agreement);

WHEREAS, pursuant to Section 3.2(b) of the Asset Purchase Agreement, Buyer and Sellers have agreed that Buyer will deliver the Adjusted Cash Purchase Price and the Purchase Price Escrow Stock (collectively the "*Escrowed Purchase Price*") into an escrow account;

WHEREAS, pursuant to Section 3.3 of the Asset Purchase Agreement, Buyer and Sellers have agreed that Sellers will deliver the Earnest Money Deposit (the "*Earnest Money Escrow Amount*," collectively with the Escrowed Purchase Price, the "*Escrowed Property*") into an escrow account,

WHEREAS, Buyer and Sellers desire to appoint the Escrow Agent to act as escrow agent hereunder in the manner hereinafter set forth and the Escrow Agent is willing to act in such capacity;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer, Sellers and the Escrow Agent hereby agree as follows:

1. Establishment of Escrow Account. The Escrow Agent shall establish and maintain on behalf of the parties hereto, an interest bearing trust account (the "*Escrow Account*") to which there shall be immediately credited and held all amounts or property received by the Escrow Agent from Buyer in accordance with Section 2 hereof. The funds and property credited to the Escrow Account shall be applied and disbursed only as provided herein. The Escrow Agent shall, to the extent required by law, segregate the funds credited to the Escrow Account from its other funds held as an agent or in trust.

2. Deposits to the Escrow Account; Investment.



(a) Buyer shall deliver to the Escrow Agent for deposit in the Escrow Account the Adjusted Cash Purchase Price and the Purchase Price Escrow Stock and Sellers shall deliver to the Escrow Agent for deposit in the Escrow Account the Earnest Money Deposit as required pursuant to Section 3 2(b) and Section 3 3, respectively, of the Asset Purchase Agreement and the terms set forth herein.

(b) All cash amounts to be deposited with the Escrow Agent shall be transferred by wire transfer of immediately available funds to the following account of the Escrow Agent (or to such other account of the Escrow Agent as the Escrow Agent shall notify Sellers and Buyer in writing prior to the transfer of funds and which account Sellers and Buyer approve):

[Name of Escrow Agent]  
ABA No.: [ ]  
Account No.: [ ]  
Allegiance Telecom Escrow  
Attention: [ ]

(c) The Escrow Agent shall confirm in writing to Sellers and Buyer the deposit received by it pursuant to Section 2(a) above and the amount of such deposit and of any other amounts are securities from time to time deposited with the Escrow Agent in connection with the Asset Purchase Agreement.

(d) Funds on deposit in the Escrow Account shall be invested in short-term United States government securities, money-market funds, interest bearing depository accounts or short-term certificates of deposit of a bank or trust company having combined capital, surplus and retained earnings of at least \$500 million; provided that any such investment can be liquidated upon three (3) days notice. The Escrow Agent shall not be accountable or liable for any losses resulting from the sale or depreciation in the market value of such investments thereof.

(e) Buyer shall be deemed the owner of all Escrowed Property and investments in the Escrow Account and shall be responsible for the preparation of all tax returns associated with the investments therein and shall pay all costs relating to such returns, and all taxes, fines and penalties and interest. The Escrow Account shall be assigned the federal tax identification number of Buyer. Buyer shall provide Escrow Agent, at any time upon request of Escrow Agent with a Form W-8 or W-9 to evidence Buyer is not subject to any back-up withholding under the United States Internal Revenue Code. Buyer shall report all income, if any, that is earned on, or derived from, the Escrowed Property as its income, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto.

### 3. Distributions from Escrow Account.

(a) Funds on deposit in the Escrow Account shall be withdrawn by the Escrow Agent only in accordance with this Section 3.

(b) If the Escrow Agent receives joint written instructions signed by Buyer and Sellers pursuant to the Asset Purchase Agreement that such agreement has been terminated, the Escrow Agent shall disburse in accordance with the joint written instructions of Buyer and Sellers the Escrowed Property to Buyer or Sellers and all accrued investment income thereon to Buyer, in each case within three (3) Business Days of receipt of notice of such termination.

(c) If one of the parties (the "*Notifying Party*") (without joint instructions from the other party) notifies the Escrow Agent that it is entitled to the Escrowed Property, such notice (the "*Notice*") shall state the reason that the Notifying Party is entitled to the Escrowed Property, and the Notice will also be sent to the other party (the "*Recipient*"). The Recipient shall have ten (10) calendar days from its actual receipt of the Notice to provide notice to the Escrow Agent and the Notifying Party disputing the Notifying Party's entitlement to the Escrowed Property. If the Escrow Agent does not receive notice disputing such entitlement to the Escrowed Property within ten (10) calendar days after the Recipient actually receives the Notice, the Escrow Agent shall pay the Escrowed Property as directed by the Notifying Party. If the Escrow Agent receives notice disputing such entitlement to the Escrowed Property within ten (10) calendar days after the Recipient receives the Notice, the Escrow Agent shall not pay the Escrowed Property until the Escrow Agent receives either an order of the Bankruptcy Court, which order has become final and not subject to appeal and has been certified by the clerk of the Bankruptcy Court or other appropriate official, or joint written notice signed by Buyer and Sellers indicating that the dispute has been resolved and directing the Escrow Agent to whom to pay the Escrowed Property and income earned thereon and in what amounts (collectively, a "*Final Resolution*"). The Escrow Agent shall pay the Escrowed Property within three (3) business days of its receipt of the written evidence of a Final Resolution required above in this Section 3(c). The Escrow Agent shall be entitled to rely, exclusively, on any representation jointly made by Buyer and Sellers in writing in relation to the release of funds from the Escrow Account, and shall release funds from the Escrow Account from time to time as directed in any such joint written instruction from Buyer and Sellers or pursuant to a Final Resolution.

(d) Upon the Escrow Agent receiving written notice, signed by Buyer and Sellers, of the Closing of the transactions contemplated by the Asset Purchase Agreement, the Escrow Agent shall disburse to Sellers the Escrowed Property, and the earnings thereon shall be disbursed to Buyer, in each case within three (3) Business Days of receipt of notice of the Closing.

(e) All disbursements of the Escrowed Property, or any portion thereof, to Buyer shall be disbursed to Buyer in accordance with the instructions attached hereto as Exhibit A. Buyer may amend Exhibit A hereto from time to time by providing written notice to the Escrow Agent. Any such amendment shall be effective immediately upon receipt by the Escrow Agent of such written notice.

(f) All disbursements of the Escrowed Property, or any portion thereof, and the earnings thereon to Sellers shall be disbursed to Sellers in accordance with the

instructions attached hereto as Exhibit B. Sellers may amend Exhibit B hereto from time to time by providing written notice to the Escrow Agent. Any such amendment shall be effective immediately upon receipt by the Escrow Agent of such written notice.

4 Termination of Escrow Account and Escrow Agreement. The Escrow Account shall be deemed dissolved and this Escrow Agreement shall terminate upon the written agreement of the parties hereto, upon disbursement of all of the funds in the Escrow Account, or upon transfer of all amounts in the Escrow Account then in the possession of the Escrow Agent to the Bankruptcy Court or such other party as the parties hereto may jointly agree upon in writing in accordance with the terms of this Escrow Agreement

5 Escrow Agent

(a) Buyer and Sellers, jointly and severally, agree to pay the Escrow Agent reasonable compensation for its services as Escrow Agent hereunder, as listed on Schedule A annexed hereto, promptly upon request therefor, and to reimburse the Escrow Agent for all reasonable expenses of or reasonable disbursements incurred by the Escrow Agent in the performance of its duties hereunder, including the reasonable fees, expenses and disbursements of counsel to the Escrow Agent. Notwithstanding the foregoing, and without prejudice to the Escrow Agent's rights hereunder, each of Buyer and Sellers shall bear 50% of the fees, costs and expenses of the Escrow Agent and of any indemnity obligation pursuant to Section 6(c) hereof

(b) The Escrow Agent may retain that portion of the Escrow Account equal to any such unpaid reasonable costs, expenses and fees incurred by the Escrow Agent as contemplated by Section 5(a) above until such time as such costs, expenses and fees have been paid.

6. Rights, Duties and Immunities of Escrow Agent. Acceptance by the Escrow Agent of its duties under this Escrow Agreement is subject to the following terms and conditions, which all parties to this Escrow Agreement hereby agree shall govern and control the rights, duties and immunities of the Escrow Agent:

(a) The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Escrow Agreement and the Escrow Agent shall not be liable, except for the performance of such duties and obligations as are specifically set out in this Escrow Agreement. The Escrow Agent shall not be required to inquire as to the performance or observation of any obligation, term or condition under any agreement or arrangement by Buyer and Sellers. The Escrow Agent is not a party to, and is not bound by, any agreement or other document out of which this Escrow Agreement may arise. The Escrow Agent shall be under no liability to any party hereto by reason of any failure on the part of any other party hereto or any maker, guarantor, endorser or other signatory of any document or any other person to perform such person's obligations under any such document. The Escrow Agent shall not be bound by any waiver, modification, termination or rescission of this Escrow Agreement or any of the terms

hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto. This Escrow Agreement shall not be deemed to create a fiduciary relationship between the parties hereto under state or federal law.

(b) The Escrow Agent shall not be responsible in any manner for the validity or sufficiency of this Escrow Agreement or of any property delivered hereunder, or for the value or collectibility of any note, check or other instrument, if any, so delivered, or for any representations made or obligations assumed by any party other than the Escrow Agent. Nothing herein contained shall be deemed to obligate the Escrow Agent to deliver any cash, instruments, documents or any other property referred to herein, unless the same shall have first been received by the Escrow Agent pursuant to this Escrow Agreement.

(c) Buyer and Sellers will reimburse and indemnify the Escrow Agent for, and hold it harmless against, any loss, liability or expense, including but not limited to reasonable counsel fees, incurred without bad faith, willful misconduct or gross negligence on the part of the Escrow Agent arising out of or in conjunction with its acceptance of, or the performance of its duties and obligations under this Escrow Agreement, as well as the costs and expenses of defending against any claim or liability arising out of or relating to this Escrow Agreement

(d) The Escrow Agent shall be fully protected in acting on and relying upon any written notice direction, request, waiver, consent, receipt or other paper or document which the Escrow Agent in good faith believes to have been signed and presented by the proper party or parties.

(e) The Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith or for any mistake in act or law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(f) The Escrow Agent may seek the advice of legal counsel in the event of any dispute or question as to the construction of any of the provisions of this Escrow Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the written advice or opinion of such counsel.

(g) The parties hereto agree that should any dispute arise with respect to the payment, ownership or right of possession of the Escrow Account, the Escrow Agent is authorized and directed to retain in its possession, without liability to anyone, except for its bad faith, willful misconduct or gross negligence, all or any part of the Escrow Account until such dispute shall have been settled either by mutual agreement by the parties concerned or by the final order, decree or judgment of the Bankruptcy Court and a notice executed by the parties to the dispute or their authorized representatives shall have been delivered to the Escrow Agent setting forth the resolution of the dispute, which

notice Buyer and Sellers hereby agree to so execute and deliver to the Escrow Agent in the event that such an order, decree or judgment is obtained from or issued by the Bankruptcy Court. The Escrow Agent shall be under no duty whatsoever to institute, defend or partake in such proceedings

(h) The agreements set forth in this Section 6 shall survive the resignation or removal of the Escrow Agent, the termination of this Escrow Agreement and the payment of all amounts hereunder

7. Resignation of Escrow Agent The Escrow Agent shall have the right to resign upon 30 days written notice to Sellers and Buyer. In the event of such resignation, Sellers and Buyer shall mutually agree upon and appoint a successor escrow agent hereunder by delivering to the Escrow Agent a written notice of such appointment. Upon receipt of such notice, the Escrow Agent shall deliver to the designated successor escrow agent all money and other property held hereunder and shall thereupon be released and discharged from any and all further responsibilities whatsoever under this Escrow Agreement; provided, however, that the Escrow Agent shall not be deprived of its compensation earned prior to such time.

If no successor escrow agent shall have been designated by the date specified in the Escrow Agent's notice, all obligations of the Escrow Agent hereunder shall nevertheless cease and terminate. Its sole responsibility thereafter shall be to keep safely all property then held by it and to deliver the same to a person designated by the other parties hereto or in accordance with the direction of a final order or judgment of the Bankruptcy Court.

8. Notices. All claims, notices, consents, objections and other communications under this Escrow Agreement shall be in writing and shall, except as otherwise provided herein, be deemed to have been duly given when (i) delivered by hand, (ii) sent by telecopier (with receipt confirmed), or (iii) when received by the addressee, if sent by Express Mail, Federal Express or other reputable overnight delivery service, in each case, at the appropriate addresses and telecopier numbers as set forth below:

ESCROW AGENT:

[Name of Escrow Agent]  
[Address of Escrow Agent]  
Attention: [\_\_\_\_\_]   
Telecopier: ( ) \_\_\_\_ - \_\_\_\_

BUYER:

XO Communications, Inc.  
11111 Sunset Hills Road  
Reston, Virginia 2019  
Telecopier: (703) 547-2025  
Attention: General Counsel

With a copy to:

Brown Rudnick Berlack Israels  
120 West 45th Street  
New York, NY 10036  
Telecopier: (212) 704-0196  
(617) 856-8201  
Attention: Edward S. Weisfelner  
Steven D. Pohl

SELLERS

c/o Allegiance Telecom, Inc.  
700 E. Butterfield Road, Suite 400  
Lombard, IL 60148  
Telecopier: (630) 522-5250  
Attention: Mark B. Tresnowski, Esq.  
Executive Vice President,  
General Counsel and Secretary

With a copy to:

Kirkland & Ellis LLP  
153 East 53rd St.  
New York, NY 10022  
Telecopier: (212) 446-4900  
Attention: Jonathan S. Henes, Esq.  
Michael Movsoovich, Esq.

(or to such other addresses and telecopier numbers as a party may designate as to itself by notice to the other parties). Notwithstanding any of the foregoing, any computation of a time period which is to begin after receipt of a notice by the Escrow Agent shall run from the date of receipt by it.

9. Successors. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that this Escrow Agreement may not be assigned by any party without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

10. Severability. If any portion or provision of this Escrow Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Escrow Agreement shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

11. Amendments Except as set forth in Sections 3(e) and 3(f) above, this Escrow Agreement may be amended or modified at any time or from time to time in writing executed by the parties to this Escrow Agreement.

12. Governing Law This Escrow Agreement shall be construed and interpreted, and the rights of the parties shall be determined, in accordance with the substantive laws of the State of New York, without regard to the conflict of laws principles thereof or of any other jurisdiction.

13. JURISDICTION THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY AND ALL DISPUTES ARISING UNDER THIS ESCROW AGREEMENT AND EACH OF THE PARTIES HERETO HEREBY EXPRESSLY CONSENTS TO SUCH EXCLUSIVE JURISDICTION.

14. Waiver No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Escrow Agreement, or the waiver by any party of any breach of this Escrow Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

15. Headings. The headings and captions in this Escrow Agreement are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Escrow Agreement

16. Counterparts. This Escrow Agreement may be executed in any number of counterparts and by each of the parties hereto in separate counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this Escrow Agreement as of the date first written above

ALLEGIANCE TELECOM, INC.

By \_\_\_\_\_  
Name  
Title.

ALLEGIANCE TELECOM COMPANY  
WORLDWIDE

By. \_\_\_\_\_  
Name:  
Title

XO COMMUNICATIONS, INC.

By \_\_\_\_\_  
Name:  
Title:

**[INSERT NAME OF ESCROW AGENT],**  
as Escrow Agent

By: \_\_\_\_\_  
Name:  
Title:



ALLEGIANCE

SCHEDULE OF FEES

To act as an  
Escrow Agent

Annual Administration Fee

\$[REDACTED]

Covers acceptance of appointment as Escrow Agent including complete study of drafts of Escrow Agreement and all supporting documents in connection therewith, conferences until the final Escrow Agreement is agreed upon and execution of final Agreement.

Investments (if applicable)

Per purchase, sale, redemption, maturity or exchange

\$[REDACTED]

Wire Transfer of Funds

\$[REDACTED] out going

\$[REDACTED] incoming

NOTE:

Charges for any services not specifically covered in this schedule will be billed commensurate with the services rendered. This schedule reflects charges that are now in effect for our normal and regular services and are subject to modification where unusual conditions or requirements prevail, and does not include counsel fees or expenses and disbursements, which will be billed at cost. The fees of our counsel shall be due and payable whether or not the transaction closes.

[Remainder of Page Intentionally Left Blank]